of the mortgagor. Later the attachment was dissolved. An action was subsequently brought to foreclose the mortgage. By the state statute a chattel mortgagee has merely a lien. *Held*, that the right of foreclosure is not lost by the attachment. *Stein* v. *McAuley*, 125 N. W. 336 (Ia.).

Under the common-law view that a mortgagee has legal title to the mortgaged property, and that the equity of redemption cannot be attached, a mortgagee waives his title by levying on the property. *Evans* v. *Warren*, 122 Mass. 303. Since a man obviously cannot attach his own property, the mortgagee is taking a position inconsistent with his rights as legal owner, and the necessary inference is that he is thereby electing to give up his title and rely solely upon the attachment. But in jurisdictions where a mortgagee has only a lien, any creditor of the mortgagor can attach the property and hold it subject to the mortgage. *Beach* v. *Derby*, 19 Ill. 617. Hence if the mortgagee himself attaches he is not taking a position inconsistent with the continuance of his mortgage lien, and the principal case seems clearly correct in holding that there is no waiver. The decisions involving the same facts are in accord. *Barchard* v. *Kohn*, 157 Ill. 579.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — TITLE TO PARTNERSHIP ASSETS WHEN SURVIVING PARTNER IS ADJUDGED BANKRUPT. — One of two partners died. Thereafter the survivor was individually adjudged a bankrupt. *Held*, that title to the firm assets vests in the trustee in bankruptcy. *Hewitt* v. *Hayes*, 90 N. E. 985 (Mass.).

Under section 5 of the Bankruptcy Act of 1898, a partnership may be adjudged bankrupt, though its members are not. *In re Sanderlin*, 109 Fed. 857. Since this act treats a partnership as an entity, putting all the partners into bankruptcy no longer has a like effect on the firm. *In re Mercur*, 122 Fed. 384. If, however, a surviving partner takes absolute title to partnership assets, that title would vest in his trustee in bankruptcy. This view of his ownership is plausible, since it has been held that an allowance may be made to his widow from partnership assets, and that debts due from an individual partner may be set off against a claim by him as surviving partner. *Bush* v. *Clark*, 127 Mass. 111; *Holbrook* v. *Lackey*, 13 Met. (Mass.) 132. The better view, however, is that he holds as a fiduciary. *Farley, Spear & Co.* v. *Moog*, 79 Ala. 148. The rule that a surviving partner may not pay his individual debts with firm assets supports this theory. *Gable* v. *Williams*, 59 Md. 46. The fiduciary character of the surviving partner is even more clear if the partnership may correctly be regarded as an entity. When the firm is bankrupt but the partners are not, it is conversely held that the trustee cannot administer the separate estates of the partners. *In re Bertinshaw*, 157 Fed. 363. *Contra*, *In re Meyer*, 98 Fed. 976.

BANKRUPTCY — PROVABLE CLAIMS — CONTINGENT DEBTS UNDER THE BANKRUPTCY ACT OF 1898. — The defendant, after receiving a discharge in bankruptcy, was sued as accommodation indorser of a promissory note, which he had indorsed before the filing of the petition, but which did not fall due until afterwards, though within the time allowed for the proving of claims. *Held*, that the defendant's liability on the indorsement was a provable debt, and was therefore extinguished by the discharge in bankruptcy. *Cohen* v. *Pecharsky*, 121 N. Y. Supp. 602 (Sup. Ct.). See NOTES, p. 636.

BANKS AND BANKING — COLLECTIONS — LIABILITY FOR DEFAULT OF SUB-COLLECTING AGENT. — The A Bank, the indorsee of a note, gave it to the B Bank for collection, agreeing that the latter should be liable only for negligence in choosing its correspondents. The B Bank forwarded to the C Bank which in turn forwarded to the D Bank. The D Bank forwarded to the E Bank which negligently failed to present for payment, whereby the indorser was released. The maker was insolvent. The A Bank sued the D Bank. *Held*, that the D

Bank is not liable. *McBride* v. *Illinois Nat. Bank*, 121 N. Y. Supp. 1041 (Sup. Ct., App. Div.).

In the absence of special agreement many authorities hold the depositary bank liable for any default of its correspondents on the ground of *del credere* agency. *Exchange National Bank of Pittsburgh* v. *Third National Bank of New York*, 112 U. S. 276. Other courts hold that the depositary bank agrees merely to exercise due care in choosing a correspondent bank as agent for the depositor. *Wilson* v. *Carlinville National Bank*, 187 Ill. 222. See 14 HARV. L. REV. 384. Under the latter rule the E Bank alone would be liable in the principal case and the special agreement is immaterial. Applying the former rule, as the court here did, the result is still correct; for if the agreement with the depositary bank makes the subsequent banks the depositor's agents the E Bank only is liable, while if its effect is limited to the B Bank the C Bank becomes the depositary and is alone liable. But the theoretically correct result is reached under trust principles rather than rules of agency. See 18 HARV. L. REV. 300. Thus the D Bank has a right of action against the E Bank which it holds in trust for the C Bank and the C Bank holds this equitable right in trust for the B Bank which in turn holds its right in trust for the A Bank. *Cf. Commercial Bank of Pennsylvania* v. *Armstrong*, 148 U. S. 50. Under this theory the agreement with the depositary bank becomes immaterial, since the only claim asserted is through, not against, the B Bank.

BILLS AND NOTES — DEFENSES — FRAUD AS DEFENSE AGAINST INDORSEE: BURDEN OF PROOF. — The indorsee of a promissory note sued the maker, who pleaded that the note was procured from him by fraud. *Held*, that the plea is not demurrable. *Hill* v. *Ward*, 91 N. E. 38 (Ind.).

In general a transferee of a note can recover unless he is shown not to be a *bonâ fide* purchaser. *Collins* v. *Gilbert*, 94 U. S. 753. But if the note was fraudulently procured, a presumption arises that it has merely been given to the indorsee for collection. See *Bailey* v. *Bidwell*, 13 M. & W. 73. This has led the courts to declare that proof of fraud shifts to the plaintiff the burden of proving that he took without notice and for value. *Hutchinson* v. *Boggs & Kirk*, 28 Pa. St. 294. It would follow that the defendant need only plead the fraud of the payee. *Hutchinson* v. *Boggs & Kirk*, *supra*. It is submitted, however, that since the defendant is relying upon the affirmative defense of fraud, he should bear the burden of proving that his defense is available against the present plaintiff. His plea, therefore, should contain an allegation that the plaintiff took with notice or without giving value. *Harvey* v. *Towers*, 6 Exch. 656. The presumption raised by proof of fraud would impose upon the plaintiff the burden of going forward with evidence to rebut that presumption, but when the evidence is all in, the defendant should fail unless the preponderance is in his favor.

BILLS OF PEACE — INSURANCE COMPANIES SEEKING TO ENJOIN SEPARATE ACTIONS. — Four independent actions were brought at law in the state court against different insurance companies upon similar policies covering the same loss. Two of the defendants removed the cases to the federal court and thereafter joined in a bill in equity against the plaintiff and the other two defendants to have the respective liabilities of the several companies determined in a single action. *Held*, that the bill will not lie. *Rochester German Ins. Co.* v. *Schmidt*, 175 Fed. 720 (C. C. A., Fourth Circ.).

For a discussion of the principles involved see 23 HARV. L. REV. 480.

CARRIERS — LOSS OR INJURY TO GOODS — GOODS SEIZED BY LEGAL PROCESS UNDER UNCONSTITUTIONAL STATUTE. — The plaintiff delivered liquors to the defendant for carriage. While in the defendant's possession, they were seized by the sheriff and destroyed under a warrant issued in conformity with an unconstitutional state statute. The defendant after seizure and before destruc-